DIAMOND McCARTHY LLP
Matthew K. Blackburn (CSB No. 261959)
mblackburn@diamondmccarthy.com
Evan E. Boetticher (CSB No. 274377)
evan.boetticher@diamondmccarthy.com
150 California Street, Suite 2200
San Francisco, California 94111
Tel: 415.692.5200 | Fax: 415.263.9200

Allan B. Diamond (*pro hac vice*)
adiamond@diamondmccarthy.com
John B. Sample, IV (*pro hac vice*)
john.sample@diamondmccarthy.com
909 Fannin Street, 37th Floor
Houston, Texas 77010
Tel: 713.333.5100 | Fax: 713.333.5199

COOLEY LLP
Heidi L. Keefe (CSB No. 178960)
Dena Chen (CSB No. 286452)
Alexandra D. Leeper (CSB No. 307310)
Lauren J. Krickl (CSB No. 305379)
Patrick W. Lauppe (CSB No. 322218)
3175 Hanover Street
Palo Alto, CA 94304
Telephone: (650) 843-5000
Facsimile: (650) 849-7400
hkeefe@cooley.com
dchen@cooley.com
aleeper@cooley.com
lkrickl@cooley.com
plauppe@cooley.com

COOLEY LLP
Michael G. Rhodes (CSB No. 116127)
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222
rhodesmg@cooley.com

Attorneys for Plaintiffs NANTWORKS, LLC
and NANT HOLDINGS IP, LLC

Attorney for Defendant NIANTIC, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

NANTWORKS, LLC, AND NANT HOLDINGS IP, LLC., Plaintiffs, v. NIANTIC, INC., Defendant.	CASE NO. 3:20-cv-06262-LB **PATENT L.R. 4-3 JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT** Hearing: August 19, 2021 (11:00 A.M.) Place: Courtroom B, 15th Floor Judge: Honorable Laurel Beeler

1   Pursuant to Patent Local Rule ("PLR") 4-3, Plaintiffs NantWorks, LLC, and Nant

2   Holdings IP, LLC., (together, "NantWorks") and Defendant Niantic, Inc. ("Niantic") (collectively,

3   the "Parties") having met and conferred, jointly submit this Joint Claim Construction and

4   Prehearing Statement for the August 19, 2021 claim construction hearing on NantWorks' U.S.

5   Patent No. 10,403,051 ("the '051 Patent") and U.S. Patent No. 10,664,518 ("the '518 Patent").

6   **I.   CONSTRUCTION OF THOSE TERMS ON WHICH THE PARTIES AGREE**

7   **(PLR 4-3(a))**

8   To narrow their disputes, the counsel for the parties have meet and conferred on May 3rd

9   and May 10th, and the parties have reached agreement on the constructions for the following claim

10   terms:

Term	Claim	Construction
"tessellated tiles"	'518 Patent, claim 1	"tiles fitted together to cover an area without gaps"

14   **II.   CONSTRUCTION OF THOSE TERMS ON WHICH THE PARTIES DISAGREE,**

15   **AND IDENTIFICATIONS OF EACH PARTY'S INTRINSIC AND EXTRINSIC**

16   **EVIDENCE (PLR 4-3(b))**

17   There are ten claim terms in dispute. The parties proposals as to the disputed claim terms

18   are as follows:

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PATENT L.R. 4-3 JOINT CLAIM CONSTRUCTION
AND PREHEARING STATEMENT

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Claim Term	NantWorks' Proposed Construction and Support	Niantic's Proposed Construction and Support
"determine at least one context related to the AR capable device and pertinent to the environment based at least on the device location" ('051 Patent, claim 1)	Proposed Construction: Determine at least one augmented reality experience on the AR capable device based on real world element attributes related to the local environment of the AR capable device. Intrinsic Evidence: '051 Patent: 2:3-15; 3:43-52; 3:49-52; 4:10-16; 4:42-44; 5:10-17; 7:67-8:3; 8:23-25; 8:41-44; 8:49-53; 9:13-26; 9:44-47; 11:4-8; 11:65-12:5; 12:13-21; 12:27-28; 12:31-37; 12:44-48; 13:1-7; 14:65-15:28; 15:34-43; 15:64-16:3; 16:20-23; 18:64-19:1; Figs 2, 3, 5. File History: '405 Appl., Mar. 25, 2019 Amdt, pp. 11-14; and Apr. 10, 2019 Ntc of Allow., pp. 2-4; '244 Appl., March 3, 2014 Resp. Off. Act. p. 9. Bathiche (U.S. App 09/167,787): ¶¶ 0021, 0048, 0052; Fig. 5.	Proposed Construction: It is presently unclear why NantWorks wishes to construe the entire claim element, or why plain and ordinary meaning does not suffice. Intrinsic Evidence: '051 Patent: 6:39-41; 7:19-35; 8:23-24

Claim Term	NantWorks' Proposed Construction and Support	Niantic's Proposed Construction and Support
"AR object" ('051 Patent, claim 1)	Proposed Construction: Data structure of at least the virtual object image for integration into an AR experience. Intrinsic Evidence: '051 Patent: Abstract; 1:33-34; 2:1-3; 3:58-62; 4:12-16; 4:40-41; 5:10-17; 5:57-59; 5:66-6:7; 6:13-17; 7:19-25; 7:29-35; 9:15-28; 9:48-60; 14:20-26; 16:45-51; 16:61-17:6; 19:54-60; 20:23-26; Figs. 1, 2, 3, 4, 5, 6. File History: '405 Appl., Mar. 25, 2019 Amdt, pp. 13-14; Apr. 10, 2019 Ntc of Allow., pp. 2-4; and Oct. 29, 2019 Amdt., pp. 1-4. Extrinsic Evidence: Object, render, The American Heritage Dictionary, (5th ed. 2011) NW_NIANTIC_001760 - 1767; Object, render, Microsoft Encarta College Dictionary, (1st ed. 2001) NW_NIANTIC_001768 - 1774.	Proposed Construction: The virtual item that is to be presented to the user. Intrinsic Evidence: '051 Patent: Abstract; Fig. 1, 4, 5, 6; 1:32-33; 5:57-59; 6:13-23; 6:36-38; 8:4-13; 9:9-60; 12:9-13; 15:62; 17:18; 21:17-18.
"AR object repository" / "AR repository" ('051 Patent, claim 1)	Proposed Construction: Plain and ordinary meaning. If the Court finds construction necessary: Memory storing AR objects. Intrinsic Evidence: '051 Patent: 5:64-66; 7:59-60; 8:45-49; 8:57-60; 8:63-9:8; 10:46-51; 12:26-31; 19:1-4; Figs. 1, 2, 5. File History: '405 Appl., Mar. 25, 2019 Amdt, pp. 13-14; Apr. 10, 2019 Ntc of Allow., pp. 2-4; and Oct. 29, 2019 Amdt., pp. 1-4.	Proposed Construction: The database(s) that contain(s) the AR objects. Intrinsic Evidence: '051 Patent: 5:7-17; 5:64-66; 8:45–9:11; 19:1-4. File History: 2019-3-25 Amdt/Req. Reconsideration After Non- Final Rejection, pp. 13-14.

Claim Term	NantWorks' Proposed Construction and Support	Niantic's Proposed Construction and Support
"identify relevant AR objects from the AR repository representing available AR objects corresponding to the at least one context" ('051 Patent, claim 1)	Proposed Construction: Identify a set of AR objects from the AR repository based on context and identify relevant AR objects that are within that set. Intrinsic Evidence: '051 Patent: 5:64-66; 7:59-60; 8:45-49; 8:57-60; 8:63-9:8; 10:46-51; 12:16-21; 12:26-31; and 19:1-4; Figs. 1, 2, 3, 5. File History: '405 Appl., Mar. 25, 2019 Amdt, pp. 13-14; Apr. 10, 2019 Ntc of Allow., pp. 2-4; and Oct. 29, 2019 Amdt., pp. 1-4.	Proposed Construction: See above for the terms "AR object" and "AR repository." It is presently unclear why NantWorks wishes to construe the entire claim element, or why plain and ordinary meaning does not suffice for the remainder. Intrinsic Evidence: See above for the terms "AR object" and "AR repository."
"alter presence" / "altered presence" ('051 Patent, claim 1)	Proposed Construction: The degree of at least a relevant AR object's visual presentation based on a spectrum. Intrinsic Evidence: '051 Patent: Abstract; 4:40-41; 5:38-43; 15:58-16:3; 16:20-29; 16:36-39; 16:47-60; 16:67-17:6; 17:51-59; 17:63-18:9; 18:2-6; 18:10-13; 18:18-25; 18:36-45; Fig. 4. File History: '405 Appl., Apr. 10, 2019 Ntc of Allow., pp. 2-4; '244 Appl., July 18, 2013 Resp. Off. Act. p. 5-7; '244 Appl., Sept. 26, 2013 Resp. Off. Act. p. 5; Oct. 18, 2013 Resp. Off. Act. p. 6; and Mar. 3, 2013 Resp. Off. Act. p. 9, 11.	Proposed Construction: Change anything about the object's presentation. Intrinsic Evidence: '051 Patent: Abstract; 18:18-45.

Claim Term	NantWorks' Proposed Construction and Support	Niantic's Proposed Construction and Support
"determine whether to alter presence of a relevant AR object based on at least the device location and the virtual element attribute" ('051 Patent, claim 1)	Proposed Construction: Determine the degree of at least a relevant AR object's visual presentation based on a spectrum based on at least the device location, AR object attributes, and the virtual element attribute. Intrinsic Evidence: '051 Patent: Abstract; 5:38-42; 15:58-62; 16:21-27; 16:49-51; 18:2-6; 18:18-32; and 18:36-45; Figs 1, 2, 3, 4. File History: '405 Appl., Apr. 10, 2019 Ntc of Allow., pp. 2-4.	Proposed Construction: See above for the terms "AR object" and "alter presence." It is presently unclear why NantWorks wishes to construe the entire claim element, or why plain and ordinary meaning does not suffice for the remainder. See above for the terms "AR object" and "alter presence."
"obtain[ing] an area of interest via an area database based on at least the device location within the sensor data" ('518 Patent, claim 1)	Proposed Construction: Obtain data from a database related to the layout of a real-world space, area, or setting based on at least the device location within the sensor data. Intrinsic Evidence: '518 Patent: 2:23-25; 2:30-37; 2:45-55; 2:58-66; 4:5-6; 4:63-67; 5:9-15; 5:21-24; 5:30-35; 5:36-63; 5:58-64; 6:35-38; 6:44-52; 8:8-25; 8:36-39; 8:46-57; 9:38-41; 10:25-29; 10:35-41; 10:42-46; 11:1-11; 11:25-39; 11:55-62. File History: '419 Appl: Nov. 4, 2019 Office Action, pp. 17-18, 22-23, 27; and Jan. 21, 2020 Ntc of Allow., pp. 2-4.	Proposed Construction: It is presently unclear why NantWorks wishes to construe the entire claim element, or why plain and ordinary meaning does not suffice. Intrinsic Evidence: '518 Patent: 26:54-55

Claim Term	NantWorks' Proposed Construction and Support	Niantic's Proposed Construction and Support
"AR content objects" ('518 Patent, claim 1)	Proposed Construction: Data structure including at least the content that is to be visually presented to generate an augmented reality experience. Intrinsic Evidence: '518 Patent: Abstract; 2:26-29; 2:38-44; 3:10-15; 3:39-42; 3:54-61; 5:8-19; 7:9-23; 7:24-31; 7:36-41; 8:19-25; 15:2-13; 16:42-52; 18:8-11; 19:33-36; 19:45-54; 19:55-20:12; 25:5-14; Figs. 1, 2, 5, 6. File History: '419 Appl: Nov. 4, 2019 Office Action, pp. 17-18, 22-23, 27; and Jan. 21, 2020 Ntc of Allow., pp. 2-4. Extrinsic Evidence: Object, render, The American Heritage Dictionary, (5th ed. 2011) NW_NIANTIC_001760 - 1767; Object, render, Microsoft Encarta College Dictionary, (1st ed. 2001) NW_NIANTIC_001768 - 1774 .	Proposed Construction: The virtual items that are to be presented to the user. Intrinsic Evidence: '518 Patent: Abstract; 2:19-22; 2:39-41; 3:54-61; 5:8-19; 7:9-35; 14:64–15:2; 25:12-14.

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Claim Term	NantWorks' Proposed Construction and Support	Niantic's Proposed Construction and Support
"an area tile map of the area of interest, the area tile map represented by a set of tile subareas that includes one or more tessellated tiles from a tessellated tile map" ('518 Patent, claim 1)	Proposed Construction: Map of an area of interest divided into tiles including subsets set of tiles having at least one tessellated tile from a tessellated tile map. Intrinsic Evidence: '518 Patent: 3:35-42; 3:45-52; 4:11-12; 4:48-52; 14:39-48; 16:13-24; 17:57-62; 18:36-45; 20:26-31; Figs. 5, 6. File History: ('419 Appl.): Nov. 4, 2019 Office Action, pp. 17-18, 27; and Jan. 21, 2020 Ntc of Allow., pp. 2-4. Extrinsic Evidence: Tessellate, The American Heritage Dictionary, (5th ed. 2011) NW_NIANTIC_001760 - 1767; Tessellate, Microsoft Encarta College Dictionary, (1st ed. 2001) NW_NIANTIC_001768 - 1774 .	Proposed Construction: See above for the term "tessellated tiles." It is presently unclear why NantWorks wishes to construe the entire claim element, or why plain and ordinary meaning does not suffice for the remainder. See above for the term "tessellated tiles."
"associated with" ('518 Patent, claim 1)	Proposed Construction: Plain and ordinary meaning. Intrinsic Evidence: '518 Patent: 3:39-42; 11:55-62; 12:7-19; 16:42-52; 18:36-45; 20:2-5; and 20:16-19. File History: '419 Appl: Nov. 4, 2019 Office Action, pp. 17-18, 22-24, 27-28; and Jan. 21, 2020 Ntc of Allow., pp. 2-4. Extrinsic Evidence: Associate, The American Heritage Dictionary, (5th ed. 2011) NW_NIANTIC_001760 - 1767 ; Associate, Microsoft Encarta College Dictionary, (1st ed. 2001) NW_NIANTIC_001768 - 1774 .	Proposed Construction: Bound to Intrinsic Evidence: '518 Patent: 3:34-42; 12:40-46; 15:14-31; 15:36-65; 16:42-52; 16:57-17:21; 18:4-12; 18:42-58 Extrinsic Evidence: Associate, The American Heritage Dictionary, (5th ed. 2011) NW_NIANTIC_001760 - 1767 ; Associate, Microsoft Encarta College Dictionary, (1st ed. 2001) NW_NIANTIC_001768 - 1774.

III.   IDENTIFICATIONS OF SIGNIFICANT TERMS AND WHETHER THOSE TERMS WILL BE CASE OR CLAIM DISPOSITIVE (PLR 4-3(c))

In Section II above, NantWorks and Niantic have consolidated their proposed terms for construction to a total of ten (10) terms, which include the case or claim dispositive terms for the Court's consideration. NantWorks additionally identifies the following terms as the most significant terms: "alter presence" / "altered presence" ('051 Patent, claim 1), "determine whether to alter presence of a relevant AR object based on at least the device location and the virtual element attribute" ('051 Patent, claim 1), "obtain[ing] an area of interest via an area database based on at least the device location within the sensor data" ('518 Patent, claim 1), and "an area tile map of the area of interest, the area tile map represented by a set of tile subareas that includes one or more tessellated tiles from a tessellated tile map" ('518 Patent, claim 1).

Niantic identifies the following terms as the most significant terms: "alter presence" / "altered presence" ('051 Patent, claim 1), "AR object repository" / "AR repository" ('051 Patent, claim 1), "associated with" ('518 Patent, claim 1).

IV.   ANTICIPATED LENGTH OF TIME NECESSARY FOR THE CLAIM CONSTRUCTION HEARING (PLR 4-3(d))

NantWorks and Niantic believe that two to three hours would be sufficient for the claim construction hearing.

V.   IDENTITY OF ANTICIPATED WITNESSES (PLR 4-3(e))

At this time, neither NantWorks nor Niantic intends to call any witnesses at the claim construction hearing.

VI.   FACTUAL FINDINGS REQUESTED FROM THE COURT RELATED TO CLAIM CONSTRUCTION (PLR 4-3(f))

The Parties do not request any factual findings, as they believe that all claim-construction issues presented here are pure questions of law.

Attestation Under Civil Local Rule 5-1

Pursuant to Civil Local Rule 5-1(i)(3), by his signature below, counsel for NantWorks

PATENT L.R. 4-3 JOINT CLAIM CONSTRUCTION
AND PREHEARING STATEMENT

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1   attests under penalty of perjury that counsel for Niantic concurs in the filing of this document and

2   consents to the affixing of her electronic signature on this document.

3   DATED: May 18, 2021   DIAMOND MCCARTHY LLP

4   By: /s/ Matthew K. Blackburn
                                                   Matthew K. Blackburn
5   Evan E. Boetticher
                                                   Allan B. Diamond
6   John B. Sample, IV

7   Attorneys for Plaintiffs NANTWORKS, LLC
                                               and NANT HOLDINGS IP, LLC
8
                                            COOLEY LLP
9
10   By: /s/ Heidi Keefe
                                                   Michael G. Rhodes
11   Heidi L. Keefe
                                                   Dena Chen
12   Alexandra D. Leeper
                                                   Lauren J. Krickl
13   Patrick W. Lauppe

14   Attorneys for Defendant NIANTIC, INC.

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